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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

FILE:

Office: Miami

Date: **AUG 25 2003**

IN RE: Applicant:

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

ON BEHALF OF APPLICANT:

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO) for review. The AAO affirmed the decision of the acting district director to deny the application. The matter is now before the AAO on a motion to reopen. The motion will be granted, and the previous decision of the AAO will be affirmed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966.

The acting district director denied the application after determining that the applicant was inadmissible to the United States, pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C). He further determined that the applicant does not possess the requisite family relationship to qualify for a waiver of inadmissibility, pursuant to section 212(i) of the Act.

Upon review of the record of proceeding, the AAO, on January 30, 2003, affirmed the findings of the acting district director that the applicant was inadmissible to the United States, pursuant to section 212(a)(6)(C) of the Act, for having attempted to procure admission into the United States by fraud or willful misrepresentation.

In a motion to reopen, filed with the Service on February 26, 2003, counsel asserts that the Service's decision omits completely that he is the Attorney of Record.¹ Counsel further asserts that the petitioner has a son who has applied for adjustment of status to become a permanent resident. He states that the applicant is requesting reconsideration of the decision since she does have a qualifying relative in order to file a waiver of a ground of inadmissibility.

¹ It is noted that when the applicant filed the application for adjustment of status, when the acting district director denied the application, and when the AAO affirmed the acting district director's decision, the record of proceeding was devoid of a Form G-28 (Notice of Entry of Appearance as Attorney or Representative) in order for counsel to be recognized in these proceedings as the applicant's authorized representative.

Section 212(a)(6)(C)(i) of the Act states, in part:

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or entry into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act, 8 U.S.C. 1182(i), states, in part:

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the **spouse, son, or daughter** of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawful resident spouse or parent of such an alien.

(Emphasis added.) Despite counsel's assertion that the applicant's son is a qualifying relative and the applicant is, therefore, eligible for a waiver of a ground of inadmissibility, as provided in section 212(i) of the Act, the applicant, in this case, is not the **spouse or daughter** of a U.S. citizen or an alien lawfully admitted for permanent residence. Accordingly, as determined by the acting district director, the applicant does not qualify for a waiver of inadmissibility, pursuant to section 212(i) of the Act.

The applicant, therefore, remains inadmissible to the United States, pursuant to section 212(a)(6)(C) of the Act. The previous decision of the AAO will be affirmed.

ORDER: The decision of the AAO dated January 30, 2003 is affirmed.